

**§ 158.54 Exchanges of restrictive lands.**

Upon written application of the Indians involved, the exchange of restricted lands between adult Indians, and between adult Indians and non-Indians, may be approved by the Secretary of the Interior, or his authorized representative. Title to all lands acquired under this part by an Indian who does not have a certificate of competency shall be taken by deed containing a clause restricting alienation or encumbrance without the consent of the Secretary, or his authorized representative. In case of differences in the appraised value of lands under consideration for exchange, the application of an Indian for funds to equalize such differences may be approved to the extent authorized by §117.8 of this chapter.

**§ 158.55 Institution of partition proceedings.**

(a) Prior authorization should be obtained from the Secretary, or his authorized representative, before the institution of proceedings to partition the lands of deceased Osage allottees in which any interest is held by an Osage Indian not having a certificate of competency. Requests for authority to institute such partition proceedings shall contain a description of the lands involved, the names of the several owners and their respective interests and the reasons for such court action. Authorization may be given for the institution of partition proceedings in a court of competent jurisdiction when it appears to the best interest of the Indians involved to do so and the execution of voluntary exchange deeds is impracticable.

(b) When it appears to the best interest of the Indians to do so, the Secretary's, or his authorized representative's, authorization to institute partition proceedings may require that title to the lands be quieted in the partition action in order that the deeds issued pursuant to the proceedings shall convey good and merchantable title to the grantee therein. (See section 6, 37 Stat. 87.)

**§ 158.56 Partition records.**

Upon completion of an action in partition, a copy of the judgment roll

showing schedule of costs and owelty moneys having accrued to or from the several parties, together with deeds, or other instruments vesting title on partition, in triplicate, shall be furnished to the Osage Agency. The original allotment number shall follow the legal description on all instruments vesting title. When a grantee is a member of the Osage Tribe who has not received a certificate of competency, deeds or other instruments vesting title shall contain the following clause against alienation:

Subject to the condition that while title to the above-described lands shall remain in the grantee or his Osage Indian heirs or devisees who do not have certificates of competency, the same shall not be alienated or encumbered without approval of the Secretary of the Interior or his authorized representative.

**§ 158.57 Approval of deeds or other instruments vesting title on partition and payment of costs.**

Upon completion of the partition proceedings in accordance with the law and in conformity with the regulations in this part, the Secretary, or his authorized representative, may approve the deeds, or other instruments vesting title on partition, and may disburse from the restricted (accounts) funds of the Indians concerned, such amounts as may be necessary for payment of their share of court costs, attorney fees, and owelty moneys.

**§ 158.58 Disposition of proceeds of partition sales.**

Owelty moneys due members of the Osage Tribe who do not have certificates of competency shall be paid into the Treasury of the United States and placed to the credit of the Indians upon the same conditions as attach to segregated shares of the Osage national fund.

**PART 159—SALE OF IRRIGABLE LANDS, SPECIAL WATER CONTRACT REQUIREMENTS**

CROSS REFERENCES: For additional regulations pertaining to the payment of fees and charges in connection with the sale of irrigable lands, see part 160 and §§ 134.4 and 152.21

## Bureau of Indian Affairs, Interior

## § 160.2

of this chapter. For general regulations pertaining to the issuance of patents in fee, see part 152 of this chapter.

### § 159.1 Conditions of contract.

(a) The form of contract (Form 5-462b)<sup>1</sup> for sale of irrigable lands specifically provides that the purchaser will obligate and pay on a per acre basis all irrigation charges assessed or to be assessed against the land purchased including accrued assessment, which accrued assessment shall be paid prior to the approval of the sale, and for the payment of the construction and operation and maintenance assessments on the due dates of each year. The agreement is to be acknowledged and recorded in the county records in which county the land is situated. The charges incidental to the recording of the instrument shall be paid by the purchaser at the time of executing the agreement.

(b) A strict compliance with the terms of paragraph (a) of this section is absolutely necessary and required.

(Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385. Interprets or applies sec. 1, 41 Stat. 409; 25 U.S.C. 386)

[22 FR 10566, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

NOTE: On May 12, 1921, Circular No. 1677, re sale of irrigable lands, was addressed to all superintendents. It was pointed out therein that the collection of irrigation construction charges was required by the terms of an act approved February 14, 1920 (41 Stat. 409; 25 U.S.C. 386), and that in addition to the construction charge there was an operation and maintenance charge assessable annually that must be paid by the landowners benefited; furthermore, that the purpose of this circular was to point out to the superintendents the necessity of advising prospective purchasers that irrigation charges must be paid and that a so-called paid-up water right was not conveyed with the land. A form of agreement to be executed by the prospective purchaser accompanied this circular.

It has been brought to the attention of the Bureau that irrigation construction charges and operation and maintenance charges have accrued against irrigable allotments prior to the time of their being advertised for sale and that the superintendents have failed to provide for payment of the accrued irrigation charges, with the result that no means are apparent for their collection.

<sup>1</sup>Forms may be obtained from the Commissioner of Indian Affairs, Washington, D.C.

With a view of preventing any future misunderstanding the form of contract accompanying Circular No. 1677 has been redrafted and Form 5-462b assigned to it. The circular has been designated "No. 1677a."

## PART 160—INCLUSION OF LIENS IN ALL PATENTS AND INSTRUMENTS EXECUTED

Sec.

160.1 Liens.

160.2 Instructions.

160.3 Leases to include description of lands.

160.4 Prompt payment of irrigation charges by lessees.

AUTHORITY: Secs. 1, 3, 36 Stat. 270, 272, as amended; 25 U.S.C. 385.

SOURCE: 22 FR 10566, Dec. 24, 1957, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

### § 160.1 Liens.

The act of March 7, 1928 (45 Stat. 210; 25 U.S.C. 387) creates a first lien against irrigable lands under all Indian irrigation projects where the construction, operation and maintenance costs of such projects remain unpaid and are reimbursable, and directs that such lien shall be recited in any patent or instrument issued for such lands to cover such unpaid charges. Prior to the enactment of this legislation similar liens had been created by legislative authority against irrigable lands of the projects on the Fort Yuma, Colorado River, and Gila River Reservations, in Arizona; Blackfeet, Fort Peck, Flathead, Fort Belknap, and Crow Reservations, Mont.; Wapato project, Yakima Reservation, Wash.; the irrigable lands on the Colville Reservation within the West Okanogan irrigation district, Washington, and the Fort Hall Reservation, Idaho. This legislation, therefore, extends protection similar to that existing in the legislation applicable to the projects on the reservations above mentioned.

CROSS REFERENCES: For operation and maintenance charges and construction costs, see parts 134 and 137 of this chapter.

### § 160.2 Instructions.

All superintendents and other officers are directed to familiarize themselves with this provision of law, and in